

Remarks

Claims 32, 44, and 46 remain in the application, and claims 55-84 have been cancelled. This transmittal is presented in response to the official office communication and is believed to resolve the issues raised by the examiner. Applicant believes the claims to be non-obvious and patentably distinct from all prior art.

Examiner Interview Summary:

On October 12, 2010, a telephonic examiner's interview was held between examiner Laura E. Edwards and applicant Michael R. Schramm. The following is a summary of the examiner's interview. Applicant Schramm inquired as to the reason for examiner Edwards' request that the petitions group dismiss applicant's petition that requested the nullification of all terminal disclaimers filed in the case. Examiner Edwards indicated in essence her concern that the application may be subject to a double patenting rejection should the petition be granted and that once a portion of the potential term of a pending application was dedicated to the public via a terminal disclaimer, nullification of the terminal disclaimer would be improper. Applicant Schramm responded in essence that 1) MPEP § 1490 part VII A made no exception for a pending or potential double patenting rejection and that a terminal disclaimer could be nullified even if a double patenting rejection would need to be made as a result of the nullification of a terminal disclaimer, 2) To applicant's knowledge, there was no outstanding or potential double patenting issues present in the case, and 3) Pursuant to MPEP § 1490 part VII A, inasmuch as the application had yet to issue as a patent, no portion of the potential patent term had yet been dedicated to the public because, "*the terminal disclaimer would not take effect until the patent is granted, and the public has not had the opportunity to rely on the terminal disclaimer*". During the interview, a quick check of the file history made by examiner Edwards confirmed that there were no outstanding double patenting issues. Examiner Edwards agreed with applicant Schramm that the petition requesting nullification of all terminal disclaimers filed in the case should be granted. Examiner Edwards indicated that she would formalize the interview via an examiner's interview summary and enter it as part of the case (since completed), and applicant Schramm indicated that he would file a renewed petition (since complete).

On October 26, 2010, a telephonic examiner's interview was held between examiner Laura E. Edwards and applicant Michael R. Schramm. The following is a summary of the examiner's interview. Applicant Schramm inquired as to the possibility of amending or adding claims in the application. Examiner Edwards indicated in essence prosecution on the merits was closed and that amendments or additional claims were not possible. Applicant Schramm indicated that he would address the formal matters in response to the Quayle action. Applicant Schramm indicated that inasmuch as a response was required within two months of the mailing date of the Quayle action and inasmuch as it took over five months for the office to respond to the original petition, applicant was concerned that the renewed petition may not be addressed quickly enough to resolve the terminal disclaimers and resultant patent term issues prior to the case moving to issuance. In response, examiner Edwards indicated that the examiner would request that the petitions group expedite the processing of the renewed petition.

Elections/Restrictions:

The examiner has imposed a restriction between claims 32, 44, & 46 and claims 55-84 and has withdrawn from consideration claims 55-84. Further, the examiner has closed prosecution on the merits under *Ex parte Quayle*. Accordingly, applicant elects for prosecution and restricts his invention to the invention disclosed in claims 32, 44, & 46, and applicant has cancelled claims 55-84.

Conclusion:

Applicant notes that any amendments made by this paper which are not specifically discussed herein are made solely for the purpose of more clearly and particularly pointing out and claiming applicant's invention.

Applicant specifically reserves the right to prosecute claims of broader and differing scope than those presented herein in a continuation application.

Applicant submits that the arguments presented herein have placed the claims in condition for allowance. Action in accordance therewith is earnestly solicited.

If the examiner has any questions or comments which may be resolved over the telephone, the examiner is requested to call Michael R. Schramm at 801-710-7793.

DATE: December 24, 2010

Respectfully submitted,

A handwritten signature in cursive script that reads "Michael R. Schramm". The signature is written in dark ink and is positioned above a horizontal line.

Michael R. Schramm
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Agent for the Applicant
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